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BEFORE THE

Federal Communications Commission

WASHINGTON, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of:

REEXAMINATION OF THE POLICY
STATEMENT ON COMPARATIVE
BROADCAST HEARINGS

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DOCKET NO. 92-52

RM-7739, RM-7740, RM-7741

To: The Commission

COMMENTS

New Paltz Broadcasting, Inc. (NPB), the licensee of WBWZ-FM, New Paltz, New York files these comments. The Commission's Further Notice of Proposed Rulemaking seeks comments on a number of issues relating to the amendment of 47 CFR §73.397(a)(1). The Commission proposes requiring a station to operate for three years before it can be transferred if the license is acquired as a result of a comparative hearing. Further comment is sought on a number of other related issues, including the holding requirements that should apply where the authorization was obtained as a result of a settlement, and whether the three-year holding period should apply to all existing and future authorizations obtained through the comparative process.

NPB was one of seven applicants that initially filed for a new FM facility, Channel 227 in New Paltz, New York. Three of the applicants remained in the proceeding which was vigorously litigated. Nonetheless, the case was settled before an Initial Decision was released, thereby avoiding years of additional litigation, and permitting an earlier inauguration of a new service to New Paltz. NPB was granted a construction permit on

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November 16, 1992 and initiated program tests on November 19, 1992.

NPB opposes the Commission's proposal to apply the three-year holding period to all existing authorizations. This proposal is fundamentally unfair and will result in no appreciable benefit to the public. The fundamental unfairness of the retroactive application of the proposed rule can be demonstrated in part by NPB's experience. In evaluating whether to consider settlement, as opposed to years of additional litigation, NPB evaluated many factors including consideration of FCC rules and policies. Those rules required a one-year holding period, not a three-year holding period. NPB determined that if the station was not successful, it could at least minimize its losses by selling. Also, any restriction on the alienability of a property interest generally adversely affects its value. Had there been a three-year holding period at that time, NPB may well not have been willing to pay the considerable sum to settle the proceeding that otherwise would, in all probability, still be tied up in the comparative process at this time. Since broadcasting is a business, as well as a public service, it would be fundamentally unfair to retroactively apply a rule that eliminates options and undermines the integrity of business decisions, based in part, on Commission rules that the Commission is now proposing to change retroactively.

Perhaps retroactive application of the rule could be justified if there was a demonstrable public benefit. There is none, however. NPB, for example, has been operating its station

for nearly a year. How will the public interest be benefitted by prohibiting NPB from selling the station for another two years? The answer is it will not. Otherwise, it must be assumed that any purchaser would be a "bad" broadcaster, offer less public service broadcasting, or be unresponsive to public needs. Obviously, such an assumption cannot be made and should not be made. In fact, the converse is more likely. The rule could prohibit a better funded broadcaster or other entity from acquiring the station and providing even better programming responsive to area needs.

Finally, since it appears that one of the primary purposes of extending the holding period to three years is to deter speculators, retroactive application will not promote this purpose. Retroactive application to existing permittees and licensees can't possibly deter profiteers from filing applications since the permits and licenses have already been granted. Also, the assumption that applicants in today's broadcasting climate are speculators is seriously flawed. The press reports, and the Commission's own data, reflect that a very high percentage of radio stations are losing money and that an even higher percentage of the stations are not profitable. The profitable stations are nearly almost all licensed to larger markets. New available frequencies, however, are nearly almost all in the small markets. Far from eliminating speculators, the three-year holding period may well eliminate anyone from even applying for a station for fear of the prospect of having to endure three years of possible losses without even the

opportunity to sell. Indeed, a sale before the three-year term in such a situation would be in the public interest since a new buyer would presumably have the additional resources or ability through group ownership to infuse resources to better address the public need.

NPB also opposes application of the three-year holding period for authorizations granted pursuant to settlement of comparative proceedings. There is a tremendous public benefit in encouraging settlement in comparative hearings. Settlements can shorten what can typically be a three or four year process to one year or less. As noted above, settlement of the New Paltz proceeding benefitted the public. The time savings alone can equal the holding period proposed by the Commission. It would encourage settlement to give prospective permittees the additional flexibility of selling within a year if they choose to do so.

Respectfully submitted,

NEW PALTZ BROADCASTING, INC.

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